IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 293 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALWANTSING NARSING BARIA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR JC SHETH for Appellant(s) : 1-Absent
MS.DS PANDIT, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 12/10/2007

ORAL JUDGMENT

1. The appellant is the original accused and has challenged the legality and validity of the order of conviction and sentence passed by the

learned Special Judge, Panchmahals at Godhra in Special [Essential Commodity] Case No. 8 of 1998. Mr. J.C. Sheth, learned counsel for the appellant is absent. Attempts were made by the Registry to inform the appellant and ultimately, the Court decided to adjourn the hearing of the appeal from time to time. On 17th September, 2007, ultimately, the Court passed the following order:-

> "Painfully adjourned for want of availability of counsel as well as for the appellant. The Registry is directed to place the appeals where Mr. J.C. Sheth is appearing before the High Court Legal Aid Committee so that the appellants of Criminal Appeals may not suffer for want of arrangements made by Mr. J.C.Sheth. The High Court Legal Services Authority may take appropriate decision in the appeal listed today and other similar appeals, such as, Criminal Appeal No. 291 of 1993. Stand Over to 28th September, 2007."

Notice issued to the appellant was served to Sumitraben Balwantbhai Bariya, wife of the appellant, and therefore, it would be too harsh for the Court to issue non-bailable warrant against the appellant. Therefore, this Court decided to deal with the appeal on merits as it

is not possible to dismiss the appeal for want oof prosecution because of the settled legal position in this regard.

2. I have heard Ms. D.S. Pandit, learned APP appearing for the State. Ms. Pandit has assisted the Court from the papers available with her and the paper book. To appreciate the say of the learned APP and the validity of the findings recorded by the trial Judge, firstly, it would be beneficial to state the basic facts that were placed before the learned trial Judge.

3. It is alleged that the accused was caught on 18th January, 1997 distributing kerosene on the strength of the license issued to one Parbat Mansukh, a Kerosene Hawker. The said Parbat Mansukh expired on or about 25th March, 1990. The deceased hawker was taking kerosene from one authorized dealer-Samir Dineshbhai Parikh on the strength of the license originally issued to Parbat Mansukh. It is alleged that the accused was posing himself to be Ratan Parbat and had concealed the death of Parbat Mansukh and as such he had purchased about 36740 liters of

kerosene and had sold it gradually to the consumers. This act of the accused, according to the prosecution is nothing but cheating by impersonation and also violation of the relevant Control Order issued under Section 3 of the Essential Commodities Act. After appreciating the oral as well as documentary evidence led during the course of the trial, the learned trial Judge convicted the accused by judgment under challenge. The accused was ordered to undergo rigorous imprisonment for 1 year and to pay fine of Rs. 500/-. In default of payment of fine, the appellant-accused was ordered to undergo simple imprisonment for 1 month. On plain reading of the depositions of prosecution witnesses, it is clear that the deceased Parbat Mansukh had expired in the year 1990. It is alleged that the accused was caught in the year 1997. It is not the say of the prosecution that the deceased Parbat Mansukh was purchasing kerosene from any other distributor other than Samir Dinesh Parikh. On appreciation of the evidence of Samir Parikh, it is not possible for

the Court to accept that the said Samir Parikh must not be aware about the death of the actual license holder. Ultimately, the license holder was a small hawker and the distributor must be selling kerosene in the quota prescribed by the government. There is no evidence of any Ratan Parbat on record. For the sake of argument, even if it is accepted that the accused was posing himself to be Ratan Parbat, then also, the distributor was not supposed to sell or provide any stock of kerosene to the said Ratan Parbat after the death of Parbat Mansukh. The distributor ought to have insisted for the entry of the name of the successor in the license. Either son or wife of the deceased Parbat Mansukh at least ought to have obtained fresh hawker's license from the government. Surprisingly, the distributor has not been prosecuted. The real prosecution would have been instituted against the heirs of the deceased Parbat Mansukh and distributor-Samir Parikh. It is surprising that the distributor has been cited as a witness. He is a person

responsible who sold or distributed kerosene to unauthorized person. Shaniben Parbat, wife of the deceased Parbat Mansukh in her evidence has stated that her husband has expired before about 8 years and that he was doing business of kerosene. She pretends that she had not parted with the original license to the accused. If her version is accepted, then, the present appellant would not have been able to draw any stock of kerosene from the distributor. It appears that the wife of the deceased-Shaniben Parbat and distributor being hand in glove with each other were indulging in the business of the kerosene and the present appellant was perhaps working on behalf of both of these real culprits. The learned trial Judge has not concentrated on this aspect, which has emerged from the evidence led by the prosecution. Witnesses examined from the Civil Supplies Department ought to have been asked pointed questions even by the Presiding Judge of the Court. For long period of about 7 to 8 years, such irregularity cannot continue unless the

responsible officials of Civil Supplies Department also have connived with the irregularity or illegality continued by the distributor and the wife of deceased Parbat Hasmukh.

4. It is not necessary to put a particular question to the witnesses called for examination by the prosecution. The defence can develop its case from the facts stated by the prosecution witnesses and also on the facts that can be inferred from the lacunas left. There is no answer to the question as to why Shaniben and the distributor were not made accused if the Civil Supplies Department was keen to irradicate the irregularities and distribution of kerosene.

5. In view of the above, the Court is of the view that the order of conviction is not sustainable, because, the above discussed probability creates some shadow of doubt and the accused-appellant should be given benefit of that shadow of doubt. In short, the present appeal is allowed. Judgment and order of conviction and sentence rendered in Special [Essential Commodities] Case

No. 8 of 1998 by the Special Judge, Panchmahals at Godhra on 15.3.99 is hereby quashed and set aside. The appellant-accused is ordered to be acquitted from the charges levelled against him for the offences punishable under Section 3 read with Section 7 and Section 12AA of the Essential Commodities Act, 1955 read with Sections 415 and 416 of I.P.C., and is ordered to be set at liberty forthwith, if not required in any other case. As the accused is on bail, the bail bond executed by the accused shall stand discharged. Amount of fine, if paid, shall be refunded to the appellant-accused on proper identification. Order and direction accordingly.

[C.K. BUCH, J.]

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